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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,985	12/05/2001	Michael J. Walsh	040014-0101	1944
26371	7590	02/10/2004		EXAMINER NICOLAS, FREDERICK C
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			ART UNIT 3754	PAPER NUMBER
DATE MAILED: 02/10/2004				

22

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/006,985	WALSH ET AL.
	Examiner Frederick C. Nicolas	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 26 January 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,7,10,11,13-23,25,26 and 36-42 is/are pending in the application.
- 4a) Of the above claim(s) 4-6,8,9,12,24 and 27-35 is/are withdrawn from consideration.
- 5) Claim(s) 1-3,7,16-23,25,26,36-39 and 42 is/are allowed.
- 6) Claim(s) 10,11,13-15,40 and 41 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) 1-3,7,10,11,13-23,25,26 and 36-42 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 19 & 21.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 13 and 15 are withdrawn in view of the newly discovered reference(s) to Weber 5,400,916. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10-11,13-15 and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber 5,400,916 in view of Hogg 6,210,382.

Weber discloses a paint container (10), which comprises a body (12) having a bottom, a plurality of side walls and a top (see Figures 1-2 for location of bottom and side walls and see column 1, lines 63-68 onto col. 2, line 1), a spout (38) extending from the top, a cap (48) sized to function as a paint holder (col. 2, ll. 34-60), a handle (32). Weber lacks a splash guard. Hogg shows a plastic container (22) having a splash guard (46) where the splash guard is disposed proximate a spout (38) and being located completely within a periphery defined by the container side walls as seen in Figure 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Weber's container top with Hogg's splash guard as taught in (col. 1, ll. 59-62), in order to reduce splashing within the container.

It also would have been obvious to one having ordinary skill in the art to modify Weber's container to be made of plastic as taught by Hogg (col. 3, ll. 22-25), in order to provide a container that is made of a disposable substance.

Applicants should note that statements of Intended use (preamble), i.e., "a stackable paint container", has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Allowable Subject Matter

4. Claims 1-3,7,16-23,25-26,36-39,42 are allowed.

Response to Arguments

5. Applicant's arguments filed 1/26/2004 have been fully considered but are moot in view of the new ground(s) of rejection. Any remaining arguments have been fully addressed in the above rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone

Art Unit: 3754

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN
February 7, 2004



2/7/04

Frederick C. Nicolas
Patent Examiner
Art Unit 3754